

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 62061-4-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
BRIAN WIEST,)	UNPUBLISHED OPINION
)	
<u>Appellant.</u>)	FILED: June 7, 2010

PER CURIAM. Brian Wiest appeals the judgment and sentence entered following his conviction by a jury of robbery in the first degree. Wiest argues that the trial court violated his right to an impartial and unanimous jury when, after the jury had begun deliberations, the court replaced one of the jurors with an alternate, but failed to instruct the jury that it must begin its deliberations anew.¹ Wiest argues that the issue may be raised for the first time on appeal, that an appellate court must be able to determine from the record that jury unanimity was preserved, and that nothing in the record indicates the court properly instructed the reconstituted jury, citing State v. Ashcraft, 71 Wn. App. 444, 859 P.2d 60 (1993), and State v. Stanley, 120 Wn. App. 312, 85 P.3d 395 (2004). The State concedes that reversal and remand for a new trial

¹ Wiest also contends that the trial court lacked authority to order Wiest to complete substance abuse treatment absent a determination that substance abused contributed to the offense. We need not address this issue.

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is required. The concession of error is well taken.

Reversed and remanded.

For the court:

Spears, J.

Dupre, C. S.

Becker, J.